

ATTORNEY GENERAL

STATE OF MONTANA

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NOTICE

To All Non-Participating Manufacturers Certified in Montana And Their Escrow Agents

January 22, 2016

REVISION OF THE MODEL ESCROW AGREEMENT

After careful review, Montana (in conjunction with its sister states) has determined that a revised escrow agreement must be implemented. The qualified escrow fund established by a Non-Participating tobacco product Manufacturer (NPM) is governed by state law. The Tobacco Products Reserve Fund (Mont. Code Ann. §§ 16-11-401 - 512, *et seq.*) statutes requires the principal funds deposited in a qualified escrow fund for units sold within the State to be maintained for the benefit of releasing parties and prohibits the NPM from “*using, assessing, or directing the use of the funds’ principal*” except as consistent with the statutes.

Montana statutes also require that a NPM “*has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.*” Mont. Code Ann. § 16-11-503(5)(b)(ii). The NPMs are required to certify and provide “*evidence and verification as may be deemed necessary by the attorney general*” to confirm the activity in the qualified escrow fund account. Mont. Code Ann. §§ 16-11-503(5)(d)(iii) and 16-11-507. Further, Montana law requires in relevant part that, “*Neither a tobacco product manufacturer nor a brand family may be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer that (a) an escrow payment required pursuant to 16-11-403 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general*” Mont. Code Ann. § 16-11-504(3)(a).

The Model Escrow Agreement currently in use by NPMs and their escrow agents must be replaced with the Revised Model Escrow Agreement. The Model Escrow Agreement was revised, in part, to clarify the valuation standards for invested escrow principal and the limitations on investment vehicles for escrow principal to maintain the qualified escrow fund in full

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compliance with the statutes. Other revisions include changes regarding information required for account statements.

Non-Participating Manufacturers and their Escrow Agents are reminded that investment activity that results in a deficiency in the principal escrow funds is a violation of the Escrow Agreement and Montana law. Pursuant to the terms of the Escrow Agreement, Non-Participating Manufacturers and their Escrow Agents are to ensure that interest sweeps and investments are done in a manner that ensures the principal balance remains in the account at all times. The Escrow Agent fees and expenses may only be paid using interest. The principal balance must not be reduced for such fees and expenses. Escrow Agents are required to provide a bank statement to the Montana Attorney General for its sub-account annually, at a minimum.

Execution of the Revised Model Escrow Agreement will be required to replace the current Escrow Agreement as part of the 2016 Tobacco Product Manufacturer Certificate of Compliance application.

The Revised Escrow Agreement, 2016 Tobacco Product Manufacturer Certificate of Compliance application, Instructions, and Appointment of Registered Agent and Registered Agent's Statement are enclosed for your convenience. The forms are also posted on our website at: [Tobacco Sales and Directory & Tobacco Settlement - » Attorney General Tim Fox](#).

If there are any questions, please contact the following individuals for assistance:

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Enclosures